

Settlement Date: September 3<sup>rd</sup>, 2015  
Time: 12:00 Noon

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

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IN RE:

**GINO J. HERNANDEZ,**

Chapter 13  
Case No. 15-11470 JLG

**NOTICE OF SETTLEMENT**

Debtor(s)

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**FAILURE TO RESPOND MAY LEAD TO A DISMISSAL OF YOUR CASE**

**PLEASE TAKE NOTICE,** that an *Order*, a true copy of which is annexed hereto, will be presented for signature to the Hon. James L. Garrity, Jr., United States Bankruptcy Judge, on the 3<sup>rd</sup> day of September, 2015 at 12:00 Noon at the United States Bankruptcy Court, U.S. Customs House, One Bowling Green, New York, New York 10004.

Hearings on objections will be scheduled upon the receipt of written objections or counterorders to be submitted to chambers by no later than close of business on the business day prior to settlement.

**OBJECTIONS TO PROPOSED ORDER:**

All objections to a proposed order MUST HAVE the settlement date of the original notice typed or written on the first page in the upper right-hand corner of the document.

**COUNTER-PROPOSED ORDERS:**

All counter-proposed orders should be clearly denominated as such, with the

return date of the original proposed order in the upper right-hand corner of the first page. A copy of the transcript, if a hearing was held, must be submitted with the counter-proposed order.

Dated: White Plains, New York  
August 12<sup>th</sup>, 2015

/s/ Jeffrey L. Sapir  
**Jeffrey L. Sapir (JLS0938)**  
**Chapter 13 Trustee**  
**399 Knollwood Road**  
**White Plains, New York 10603**  
**Chapter 13 Tel. No. 914-328-6333**

**TO:** United States Trustee  
201 Varick Street # 1006  
New York, New York 10014

Gino J. Hernandez  
6218 Madison Street  
West New York, New Jersey 07093

Daniel M. O'Hara, Esq.  
The Law Firm of Daniel M. O'Hara, PLLC  
250 Park Avenue 7<sup>th</sup> Floor  
New York, New York 10177

NYS Department of Taxation & Finance  
Bankruptcy Section  
P.O. Box 5300  
Albany, New York 12205

Warshaw Burstein, LLP  
555 Fifth Avenue  
New York, New York 10017

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

-----x  
IN RE:

Chapter 13  
Case No. 15-11470 JLG

**GINO J. HERNANDEZ,**

Debtor

-----x

**ORDER DISMISSING CHAPTER 13 CASE**

The Court finds that cause exists to dismiss this case under  
11 U.S.C. §1307(c )(1) in that the debtor has caused unreasonable delay that is prejudicial to  
creditors.

The Court further finds that cause exists to dismiss this case under  
11 U.S.C. §1307(c )(4) in that the debtor has failed to remit timely plan payments to the  
Chapter 13 trustee as required by 11 U.S.C. §1326;

The Court further finds that the debtor has failed to comply with  
11 U.S.C. §521(i) by failing to timely file documents as required under 11 U.S.C. §521(a)(1);

The Court further finds that the debtor failed to comply with  
11 U.S.C. §521(e)(2)(A)(i) in that the debtor failed to provide the trustee with copies of federal  
and state tax returns for the most recent tax years preceding the commencement of the case,  
within seven (7) days prior to the meeting of creditors scheduled pursuant to  
11 U.S.C. §341(a).

The Court further finds that cause exists to dismiss this case under  
11 U.S.C. §109(e) on the ground that the debtor's listed unsecured debt exceeds the \$383,175.00  
limitation.

**IT IS HEREBY ORDERED THAT:**

Pursuant to 11 U.S.C. §1307(c )(1), (c )(4) and §521(i) and §521(e)(2)(B), and §109(e) this Chapter 13 case is hereby dismissed.

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

-----x  
IN RE:

Chapter 13  
Case No. 15-11470 JLG

**GINO J. HERNANDEZ,**

**TRUSTEE'S AFFIDAVIT**

Debtor(s)

-----x  
STATE OF NEW YORK )  
COUNTY OF WESTCHESTER ) ss.:

Jeffrey L. Sapir, being duly sworn, deposes and says:

1. He is the standing Chapter 13 Trustee.
2. The debtor filed a Chapter 13 proceeding on June 2<sup>nd</sup>, 2015.
3. The debtor failed to comply with the provisions of 11 U.S.C. §1307(c)(1) and (c )(4).
4. The debtor is in violation of 11 U.S.C. §521(i) of the Bankruptcy Code which requires the debtor to file payment advices and evidence of other payments received within 60 days. .
5. The debtor is in violation of §521(e)(2)(A)(i) of the Bankruptcy Code which requires the debtor to provide *seven (7) days prior to the §341(a) meeting of creditors*, copies of federal and state tax returns for the most recent tax years preceding the commencement of the case, to wit, 2012, 2013 and 2014.
6. Upon examination of the debtor, the trustee was informed that the debtor has failed to file tax returns for several years nor does he keep business records.
7. The debtor failed to remit timely proposed plan payments to the trustee, having remitted -0- payments, and being, at this juncture, two months in arrears.

8. The debtor fails to qualify under Chapter 13 on the ground that the debtor's claimed unsecured debt of \$414,315.47 exceeds the \$383,175.00 limitation under the parameters of Chapter 13.

9. Further, the debtor is not a resident of New York State.

10. The delay created by the debtor is prejudicial to creditors. .

**WHEREFORE**, the trustee respectfully requests that the annexed order dismissing this case pursuant to 11 U.S.C. §1307(c )(1), (c )(4) and §521(i) and §521(e)(2)(B), and §109(e), be signed,

/s/ Jeffrey L. Sapir  
**Jeffrey L. Sapir**

Sworn to before me this  
12<sup>th</sup> day of August, 2015

/s/ Jody L. Kava

Jody L. Kava  
Notary Public, State of New York  
No. 02KA4836806  
Qualified in Westchester County  
Term Expires: 10/31/17

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

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IN RE:

Chapter 13  
Case No. 15-11470 JLG

**GINO J. HERNANDEZ,**

**Debtor**

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**AFFIDAVIT OF MAILING**

STATE OF NEW YORK )  
COUNTY OF WESTCHESTER ) ss.:

Lois Rosemarie Esposito, being duly sworn, deposes and says:

I am not a party to the action herein, I am over the age of 18 years and reside in the County of Westchester, State of New York. On August 12<sup>th</sup>, 2015, I served a true copy of the within document, to the herein listed parties at the address(es) designated for that purpose, by mailing same in a properly sealed envelope with postage prepaid thereon, in an official depository of the United States Postal Service within the State of New York to the following:

**TO:** United States Trustee  
201 Varick Street # 1006  
New York, New York 10014

Gino J. Hernandez  
6218 Madison Street  
West New York, New Jersey 07093

Daniel M. O'Hara, Esq.  
The Law Firm of Daniel M. O'Hara, PLLC  
250 Park Avenue 7<sup>th</sup> Floor  
New York, New York 10177

NYS Department of Taxation & Finance  
Bankruptcy Section  
P.O. Box 5300  
Albany, New York 12205

Warshaw Burstein, LLP  
555 Fifth Avenue  
New York, New York 10017

/s/ Lois Rosemarie Esposito  
**Lois Rosemarie Esposito**

Sworn to before me this  
12<sup>th</sup> day of August, 2015  
/s/ Jeffrey L. Sapir  
Jeffrey L. Sapir  
Notary Public, State of New York  
No. 02SA8764500  
Qualified in Rockland County  
Term Expires: 12/31/16